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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 819

HARRY A. REOUX, *Petitioner*

v.

THE FIRST NATIONAL BANK OF GLENS FALLS, (as Executor of the Estate of Adelia H. Reoux, deceased), *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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Petitioner prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the State of New York, entered in the above-entitled case on June 10, 1965.

CITATIONS TO OPINIONS BELOW

The opinion of the Court of Appeals of the State of New York is reported at 16 N.Y.2d 685, 261 N.Y.S.2d 887, and is reproduced herein as Appendix A; the opinion of the Appellate Division, Third Department is reported at 21 A.D.2d 940, 251 N.Y.S.2d 286 (Appen-

dix B); the opinion of the Supreme Court, Warren County, Special Term, is reported at 40 Misc.2d 442, 243 N.Y.S.2d 466 (Appendix C); the opinion of the Appellate Division, Third Department, granting a new trial is reported at 16 A.D.2d 543, 229 N.Y.S.2d 934 (Appendix D). Prior decisions involving the same litigants and controversy include: 3 N.Y.2d 940, 168 N.Y.S.2d 11 (Appendix E); 3 A.D.2d 560, 163 N.Y.S. 2d 212 (Appendix F); opinion of Official Referee, Supreme Court, Warren County (unreported) (Appendix G).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

The decision of the Court of Appeals of New York was entered on June 10, 1965; a motion for reargument was denied and judgment entered on July 16, 1965; Mr. Justice Harlan entered an order granting petitioner's motion for extension of time within which to file a Petition for Certiorari to and including December 13, 1965. The Federal Question relates to the denial of petitioner's right to due process of law and a fair trial assured to him by the Fourteenth Amendment to the United States Constitution. This issue first became a question in this case at the time that petitioner moved for a new trial, *Reoux* v. *The First Nat'l Bk. of Glens Falls,* (Appendix D), alleging that his deceased mother (the original defendant, since substituted for by the present respondent) and her attorney had concealed and suppressed evidence which was crucial to the determination of the central issue in the original action, and that this suppression denied petitioner due process of law and a fair trial.

The Appellate Division granted the new trial "in the interest of justice". (Appendix D, at 17a). Subsequently the Supreme Court of Warren County, Special Term, held a new trial and found for petitioner, basing its decision upon the newly discovered evidence. (Appendix C). The Appellate Division, *per curiam,* affirmed Special Term. (Appendix D). The Court of Appeals of the State of New York reversed the Appellate Division, *per curiam,* finding that the newly discovered evidence did not refute petitioner's admissions of undue influence and overreaching. (Appendix A). In motion for reargument the Federal Question was again presented. The Court denied reargument without an opinion.

QUESTION PRESENTED

Was petitioner denied due process of law and a fair trial by the action of the Court of Appeals of the State of New York in reinstating a decision which had been procured by the suppression of evidence at trial by respondent's counsel, an officer of the courts of the State of New York, where the effect of this suppression was to prevent evidence from coming before the Court at the one point in time when it would have conclusively proved petitioner's case?

STATEMENT OF THE CASE

This much-litigated intra-family controversy finds its genesis in a 1924 oral agreement made between petitioner and his mother and father. In essence the agreement was that the mother and father would assure that petitioner would share their estate evenly with his sister, if petitioner would, after completing his legal studies, come back to the family home in Warrensburg and work with his father in the administration of the

various family businesses and be responsible for looking after his mother's extensive real estate holdings. (Appendix F, at 21a).

These facts are well-documented and it cannot be denied that petitioner fulfilled his part of this understanding. Although the agreement was probably not enforceable at law because of the Statute of Frauds, the parties acted according to it for nearly thirty years. Petitioner spent literally thousands of unrecompensed hours supervising the lumbering of his mother's lands, searching and clearing her title to many more acres of land, and generally increasing the value and income to her from the lands. He also frequently acted as her attorney in legal matters affecting the lands, although he was seldom recompensed for this representation and, in fact, at times had to pay expenses and costs himself. Petitioner also assisted his father in several business enterprises. (Appendix F, at 21a).

In 1938 petitioner's father died. Petitioner's mother was named Executrix and sole beneficiary under the father's Will. Petitioner served his mother as attorney in the administration of the estate. Thereafter he continued to look after his mother's financial and legal affairs. His activities on his mother's behalf consumed considerable time, especially since Mrs. Reoux spent a part of each year in Florida and the remainder at petitioner's sister's home, which required him to carry on extensive correspondence and long-distance telephoning to keep her apprised of his activities. (R. 29-34).[1]

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[1] Record citations herein are to the Record on Appeal, filed in the Court of Appeals of the State of New York, ten copies of which were filed in this Court.

Petitioner worked diligently to procure for his mother profitable investments and he was eminently successful in his work. His stewardship increased the value of her securities many times over. (R. 31-32). Indicative of the extent of Mrs. Reoux's confidence in her son's judgment in these financial matters, and her reliance upon his assistance, is the testimony of the broker who handled her account. He testified that Mrs. Reoux instructed him to consult petitioner on every sale or purchase, and further, that the account had been a "very profitable" one. (R. 109).

During the period from 1938 to 1953, petitioner's mother had made gifts to both petitioner and his sister, Mary Beswick, who was married to an attorney, Albert Beswick. (R. 63-68). As the Appellate Division noted in one of its numerous decisions in this case, "the record shows that subsequent to the death of the husband and father of the parties, a well-defined testamentary plan was established by the mother to treat her son and daughter on equal terms". *Reoux* v. *The First Nat'l Bk. of Glens Falls.* (Appendix D, at 11a).

However, this "well-defined testamentary plan" began to become somewhat ill-defined beginning in 1950 and continuing through 1953. During this period petitioner's mother (who was then 77-80 years of age and in failing health) removed a large amount of her securities from the safety deposit box controlled by petitioner and herself, along with a Will she had made some years previous, the terms of which divided her estate equally between petitioner and his sister. (R. 32-33; 165). Petitioner's mother removed these securities to a bank in the city where her daughter and son-in-law resided. Late in this period of time she also transferred large amounts of securities to her daughter,

Mary Beswick, as well as to Mrs. Beswick's children. Mrs. Reoux also made a new Will during this time, the terms of which excluded petitioner entirely. (R. 96-102).

During July of 1953 petitioner's mother suffered a slight setback in her health, which necessitated her hospitalization. Thereafter she began convalescence at a rest home. (R. 35). While she was convalescing she requested that petitioner draft another Will for her, to follow the pattern of the original Will, *i.e.*, to provide for the equal division of her estate between petitioner and his sister. Petitioner drew such a Will and, on July 21, 1953, his mother executed it. (R. 168).

In the months of August and September of 1953, Mrs. Reoux continued her convalescence at petitioner's home. At this time petitioner, alarmed at the fact that his mother failed to receive dividend checks on a large number of her stocks, learned for the first time that his mother had made the aforementioned transfer of securities to Mary Beswick and her children. After petitioner discussed this with Mrs. Reoux, and the effect the transfer had upon the "share-equally" agreement, Mrs. Reoux decided to convey some of her remaining securities to petitioner in order to effect the balance in her giving which she had previously maintained. Thereafter, on September 19, 1953, Mrs. Reoux signed over some of her securities to her son. (R. 36-51). These transfers were made complete and final several days later when the securities were transferrd to petitioner's name.

Shortly thereafter Mrs. Reoux ended her rest at petitioner's home and again took up residence at the home of Mary and Albert Beswick. It was not long

after this (November 5, 1953) that Albert Beswick, himself an attorney who had performed legal duties for Mrs. Reoux in the past, arranged a meeting between Mrs. Reoux and a Trust Officer of the First National Bank of Glens Falls (respondent of record in this proceeding) for the purpose of discussing the terms of Mrs. Reoux's Will. Mr. Beswick brought Mrs. Reoux to the bank for a conference the same day that he called for an appointment. (R. 84). As a result of a conference between Mrs. Reoux, the trust officer and an attorney for the bank, Mrs. Reoux, accompanied by her daughter, returned on November 9th and executed a new Will which left all of her estate to her daughter or to her daughter's heirs. (R. 146). Petitioner was completely disinherited by this Will. Mrs. Reoux desired to explain her reasons for disinheriting petitioner, and it was suggested that she should write a letter of even date, explaining her reasons for not mentioning her son. This letter stated:

> Gentlemen: By my will of this date, I have made no provision for my son, Harry Reoux. My reason for this action is that I have made transfers of securities to him in my lifetime which, with his other assets, should adequately provide for him and his family. I have reached this conclusion without suggestion from anyone and as a result of considerable thought on my part.
>
> Very truly yours, Adelia H. Reoux. (R. 74-75).

Mary Beswick was present at the writing of this letter and knew its contents. (R. 78-79).

Shortly after the above-described Will signing, Mrs. Reoux transferred extensive real property holdings to Mary Beswick, the deeds to which were written by

Albert Beswick. (R. 103-05). These properties would have ultimately passed to the Beswick children under the terms of the November 9, 1953 Will. Early in 1954 petitioner visited his mother in Florida, where she had gone, following her usual custom. By this time he had become aware that a transfer of an extensive part of his mother's real estate had been made to his sister, and that his brother-in-law had drawn the deeds to accomplish the transfer.

Petitioner questioned his mother concerning the fact of the transfer of her land, and questioned her as to what effect this was to have on the "share-equally" agreement. (Petitioner did not have any knowledge at this time of the November 9 Will which entirely disinherited him.) In order to maintain the "balance of giving" pattern which she had established and followed since 1938, Mrs. Reoux decided to transfer to petitioner certain stocks and bonds, which she did by way of bill of sale on April 1, 1954. Unlike the securities transferred on September 19, 1953, these securities did not have the endorsements necessary for their complete transfer to petitioner. On July 23, 1954 petitioner delivered to his mother at her daughter's home the necessary stock and bond powers required to complete the transfer and requested that she sign the necessary instruments.

On August 2, 1954 Mrs. Reoux, then living with her daughter, responded with a registered letter:

> Dear Harry:
>
> I have received your registered letter demanding that I turn over all of my stocks to you.
>
> You told me last winter that the paper you had me sign was for the Imperial and other stocks that I

gave you last fall. I never intended giving you any more than you already had and I am not going to give you any more.

Mother.

On August 4, 1954 petitioner filed a complaint to compel his mother to deliver to him endorsements of the April 1, 1954 stocks and bonds which he had in his possession. (R. 4). Mrs. Reoux filed an answer denying any legal obligation to do such and a counterclaim, demanding the return of the securities which had been transferred to petitioner on September 19, 1953 (R. 11), and which had previously been fully and finally transferred to petitioner's name.

While a person does not sue his mother in the ordinary course of events, and such a suit hardly evokes sympathy on behalf of the complainant, this suit must be seen in the light of the real circumstances existing at the time in order to place it in proper perspective. Petitioner was not suing his mother, although she was the named defendant. He was in fact attempting to bring out in the open the activities of his sister and her husband which were bringing about the dissipation of his mother's estate, and to prevent them from further manipulating Mrs. Reoux to serve their own economic ends.

In August, 1954 Mrs. Reoux was referred by her son-in-law, Albert Beswick, to Ernest B. Morris as an attorney to represent her in the action which had been brought by petitioner. (R. 83-89). After retaining him as her attorney (he has remained such throughout), Mrs. Reoux both informed him of the existence of the November 9, 1953 Will and provided him with a copy of same, *prior to* the trial on the merits. (R. 87). Mr. Morris testified that he had extended conversa-

tions with Mrs. Reoux about this Will *prior to* trial. (R. 89). It is inconceivable that Mr. Morris did not also have knowledge of the accompanying letter. However, in spite of the fact that Mrs. Reoux, her attorney, and her son and daughter-in-law knew of the existence of the November 9, 1953 Will, and in spite of the fact that these persons knew of the existence of the November 9 letter, neither of these documents were put into evidence at trial. Instead, Mrs. Reoux's counsel placed in evidence the July 21, 1953 Will, which maintained the "share-equally" plan and dwelt at great length upon the circumstances surrounding its making and what it augured for the proceeding. (Appendix F, at 22a). Mrs. Reoux's counsel was thus tacitly, if not explicitly, representing to the court that the July 21, 1953 Will was her legal, subsisting Will, when in fact he had explicit knowledge of the fact that this Will had been revoked and that there existed a subsequent Will, the terms of which bore directly on the issues before the referee.

Mrs. Reoux, who by this time was eighty-two years old, and who was then living with her daughter and son-in-law, testified in a confused and contradictory manner and did not mention the Will or the letter.

After an extensive trial, the Official Referee of the Supreme Court, Warren County, found for petitioner. The Supreme Court thereafter entered judgment on the decision of the referee, directing Mrs. Reoux to endorse or assign the stocks and bond certificates, and dismissed the counterclaim. In his opinion, the referee remarked:

> I am convinced that the daughter has enriched herself out of her mother's property to the detriment

of her brother. But for her acts, conduct and greed this lawsuit never would have arisen. (Appendix G, at 28a).

On appeal, the Supreme Court, Appellate Division reversed, holding that the evidence established that Mrs. Reoux had no legal obligation to give her son anything during her lifetime and that the petitioner was not entitled to any of the securities. Petitioner's cause of action was dismissed and judgment was directed for the mother on her counterclaim. (Appendix F). *In so holding the Appellate Court placed great stress upon the existence and terms of the July 21, 1953 Will, finding that, on the basis of the equal distribution announced therein, Mrs. Reoux had complied with the 1924 oral agreement, stating that she* "complied with the very agreement which plaintiff claims". (Appendix F, at 22a). Judgment was entered on December 3, 1957 against petitioner in the amount of $99,306.54.

The Court of Appeals, State of New York unanimously affirmed (without opinion) the Appellate Division. (Appendix E). Mrs. Reoux's counsel continued to suppress the fact of the existence of the subsequent Will and letter before these appellate courts.

Mrs. Reoux died on August 18, 1958. The Will dated November 9, 1953 was offered for probate proceedings and was admitted to probate following a trial of objections interposed by petitioner. Accompanying this Will was the November 9 letter explaining petitioner's disinheritance.

On the basis of this "newly discovered evidence", the Appellate Division took the extraordinary action of reversing its original decision and granted petitioner's motion for a new trial on the counterclaim, finding it-

self compelled to do so "in the interests of justice". (Appendix D). In granting the new trial the court well noted the fact that respondent [and thereby her counsel] *had known of the existence of the Will and of the letter of explanation.* The court also noted its own reliance on the July 21, 1953 Will in making its original decision. (Appendix D, at 13a).

On retrial, it was found that the evidence established that the securities which Mrs. Reoux had delivered to her son on September 19, 1953 (the subject of the counterclaim) had been freely and voluntarily given. (Appendix C). This decision was affirmed, *per curiam,* by Appellate Division. (Appendix B). On appeal to the Court of Appeals of the State of New York, the judgment was reversed and the prior judgment of December 3, 1957 was reinstated. (Appendix A). In reversing, *per curiam,* the court held that the newly discovered evidence did not refute plaintiff's alleged undue influence and overreaching nor did it reveal any donative intent on the part of the mother as to the securities in question. Thus petitioner failed to carry the burden, cast upon him because of the "attorney-son" confidential relationship, of establishing by clear and satisfactory evidence that the transfer of securities in question was a "valid and voluntary gift".

REASONS FOR GRANTING THE WRIT

This case is perhaps the most litigated of its type in the history of New York jurisprudence. It is now in its twelfth year. Thirty-six members of the judiciary of the State of New York have passed (some several or more times), upon the substantive issues involved. Many others have been concerned with col-

lateral and procedural questions which have arisen. The case has occasioned nine different opinions and decisions on the substantive issues alone.

The question arises as to why this case has persisted so long, especially in view of the apparent commonplace nature of the issues and the fact that costs and counsel fees may well have exceeded the sum that either litigant can hope to gain or lose by a favorable decision. The case has persisted because petitioner, Harry Reoux, has never in a truly meaningful sense had his day in court. He was denied this right by the action of respondent and her counsel in suppressing evidence that would have conclusively proved his case, at the one point in time when it could have had such an effect. Petitioner has thus persisted in this litigation because he believes, as a matter of principle and law, that he has been morally and legally wronged, and because he believes that the same judicial processes which have served as a vehicle for perpetration of this wrong should also serve as a vehicle for purging and correcting the wrong.

However, this case has more to recommend it to this Court than the fact it has lasted a long time and has been wrongly decided. It is important in a larger sense because it provides this Court with an opportunity to speak out on the ethical obligations of counsel in a case which has occasioned much publicity and notoriety within the New York legal community. It provides the Court with a seldom seen opportunity for it to interpret the Canons of Professional Ethics, and to enunciate principles of ethics to guide counsel in the conduct of their case.

II.

In order to evaluate the effect of the suppression of material and crucial evidence by respondent's counsel, it is necessary to consider the suppression in the context of the events occurring at that time. The issue before the trial court in 1955 on respondent's counclaim was whether the September 19, 1953 transfer of securities from Mrs. Reoux to her son Harry was a "free and voluntary" gift.[2] At the time of the trial, Mrs. Reoux was eighty-two years old, weakened by the effects of arteriosclerosis, and was living with her daughter and son-in-law. Her testimony at the trial was extremely confused and contradictory. She denied, however, that she intended the securities to be a gift, testifying that petitioner forced her, against her will, to transfer them to him. Counsel for respondent then introduced into evidence the July 21, 1953 Will which divided Mrs. Reoux's estate equally between petitioner and his sister. Mrs. Reoux did not repudiate this Will, nor did she (or her attorney) call to the court's attention the fact that she had made the November 9, 1953 disinheriting Will, or to the fact of the existence of the letter of even date explaining the disinheritance. Her attorney continued this deception in spite of the fact that under New York law, Deced. Est. Law, Art. 2, § 34 (McKinney's Consol. Laws), the July 21, 1953 Will was revoked and a legal nullity.

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[2] The new trial was limited to the counterclaim, the subject of which was the September 19, 1953 securities transfer, since the newly discovered November 9, 1953 letter would only have probative force going to show a free and voluntary gift of these securities, and would not have such effect with respect to the April 1, 1954 securities, which were later in time than the November 9, 1953 Will and which were the subject of the original complaint.

Petitioner introduced at trial the letter dated August 2, 1954, written by Mrs. Reoux shortly after petitioner had requested that she complete the transfer of the April 1, 1954 securities, which letter is set out, *supra*, p. 8. Mrs. Reoux's statement in the letter that "I never intended giving you any more than you already had", standing alone, did not convince the Appellate Division when the case was before it the first time that the "you already had" language embraced the September 19, 1953 securities. This despite the fact that Mrs. Reoux referred in her letter to the "Imperial Stock" she had given petitioner "last fall", which stock had been a part of the September 19, 1953 transfer. This ambiguity would not have persisted had the Will and letter of November 9, 1953 been before the court.

Had the November 9, 1953 Will—Mrs. Reoux's only legal and subsisting Will—been introduced at the first trial, the November 9 letter explaining the disinheritance would have also come out. This letter clearly indicated that Mrs. Reoux intended the September 19, 1953 stocks and bonds to be a gift to Harry Reoux, especially when considered cumulatively with the August 2, 1954 letter. Further, if the Will and letter had been introduced the testimony of the attorney recommended by the bank who drew the Will and who prepared the letter would have come out. He testified at the second trial that the reason Mrs. Reoux gave him for disinheriting her son was that "she had made previous gifts to him, I gathered in substantial amounts." (R. 73).

The Will and letter were written in the presence of Mrs. Reoux's daughter, Mary Beswick, and this took place in the trust office of the Glens Falls National

Bank. (R. 73). There was no possible way that petitioner could have been influencing his mother at that time. She was under the direct influence and control of her daughter. Yet she freely admitted in that letter that the September 19, 1953 securities were intended to be a gift. Her words can have no other import. The result of the suppression of the November 9, 1953 Will and letter is the reason for this petition. By purposefully withholding this Will from the court, counsel for petitioner prevented the court from knowing about the November 9 letter, and about the disinheritance. The courts thereafter acted upon the assumption that Mrs. Reoux intended to divide her estate equally between petitioner and his sister. This was a patently false assumption, as counsel for respondent well knew.

Had the Will come out, petitioner's counsel could have confronted Mrs. Reoux with the letter and the Will. Her testimony denying a gift would thus have been impeached and the true character of the proceedings would have come to light, *i.e.*, that petitioner's sister and brother-in-law had been influencing Mrs. Reoux to distribute her assets to them and to disinherit petitioner; that Mrs. Reoux intended the September 19, 1953 transfer to be a gift, but that her disposition of mind had been influenced contrariwise prior to trial. Since, however, the existence of this Will did not come out until several years later when petitioner contested his mother's Will after her death, petitioner was deprived of the opportunity to bring out into the open *at the one point in time when he could have proved his case* the Will, the letter, the testimony of the drafter of the Will and letter, and the actions of his sister and brother-in-law. It is apparent also from the second decision of the Court of Appeals that the new

trial granted by the Appellate Division, after the evidence came to light, did not cure the false impression induced by the suppression of the Will and the letter. Mrs. Reoux's testimony concerning the voluntariness of the September 19, 1953 transfer was not read into the record at the new trial. In view of the dubious accuracy of Mrs. Reoux's original testimony, and in view of counsel's actions in procuring it, his reticence to place her previous testimony in the subsequent record, in the face of the new evidence, is readily understandable. Thus petitioner did not actually ever have his day in court, and was permanently forclosed by counsel's deceit from proving the voluntary nature of his mother's gift by clear and unambiguous evidence.

III.

The Canons of Professional Ethics of the Judiciary Law of the State of New York read in part as follows:

> *Candor and Fairness*
>
> It is unprofessional and dishonorable to deal other than honestly with the facts . . . in the presentation of causes. Canon 22, Jud. Law, Appendix at 771 (McKinney's Consol. Laws).

The Fourth paragraph of the Oath of Admission of the Bar of the State of New York reads:

> I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law.

New York also has passed legislation making it a crime for an attorney to deceive a court. The relevant statute reads:

An attorney or counselor who:

> 1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party; or . . . .
>
> Is guilty of a misdemeanor . . . Penal Law, §273 (McKinney's Consol. Laws).

These provisions are typical of those found in many state codes. (*E.g.*, D. C. Code, § 11-1302 (1951); Iowa Code, § 610.15 (1946). See generally, 52 Colum. L. Rev. 1039, 1041). They reflect the consensus of the members of the bars, legislatures and courts of this country as to the ethical obligations of counsel in presenting their causes. Of course, as stated they are just general, somewhat abstract principles. They take on flesh and meaning only in the context of actual cases. Because of their generality and abstractness, an attorney is oftentimes placed in a quandry in discerning his actual obligations under the law. He must look to his own conscience and the pronouncements of the courts and bar associations for guidance. However, these too are often uncertain guides. This Court has in this case an opportunity to give meaning and content to these general principles through the medium of interpretation as they apply to the facts of this case, and through enunciating the Court's interpretation of the principles guiding counsel generally in the presentation of their cases before any judicial tribunal, state or federal.

Courts are entitled to rely upon the accuracy of any statement of relevant fact made by those appearing before them and those appearing before courts have, at the very least, the responsibility not to hinder the

administration of justice. *Nilva* v. *U. S.*, 227 F.2d 74 (8th Cir. 1955). The stifling or suppression of evidence, *Harkin* v. *Brundage,* 13 F.2d 617 (7th Cir. 1926), or the submission of only a partial statement of facts where it is known to be such, *Matter of V.*, 42 N.Y.S. 268, 10 App. Div. 461, are types of misconduct which have been held to reasonably have the effect of deceiving or misleading a court in an action pending before it. An attorney is to be held strictly accountable for his statements or conduct which would have the effect of misleading or deceiving a court. *Matter of Rotwein,* 247 N.Y.S.2d 775, 777. See also, Drinker, *Legal Ethics,* p. 74. Whatever the device employed, the deliberate effort on the part of a lawyer to mislead the court, in a material manner, whether by misrepresentations, unfair and evasive tactics, or other irresponsible means, has the tendency to obstruct justice and there can be no justification for such conduct. *In re Schildhaus,* 259 N.Y.S.2d 631.

Deception is known by its effect—a judgment procured and perverted by a mistaken apprehension of the facts or the law. That the Courts of New York were deceived by the suppression of the November 9, 1953 Will is apparent from their opinions. The Appellate Division relied heavily upon the supposed "share-equally" distribution thought to exist because of the July 21, 1953 Will. In granting petitioner a new trial, the Appellate Division stated, in reference to this July 21, 1953 Will, that

> this Court said that plaintiff proved no agreement between the plaintiff and the defendant bearing upon the equal distribution of the defendant's property between her children in her lifetime, but

> the Court then held that, in any event, the defendant had substantially complied with any alleged agreement respecting the division of her estate by the terms of the will of July 21, 1953, wherein she divided her residual estate between plaintiff and his sister. *A finding . . . to that effect was made at the request of the defendant who knew that a new will leaving everything to the daughter and her family and the letter of explanation, the subject of this motion, had been executed by her on November 9, 1953.* (Appendix D, at 13a). (Emphasis added.)

The decisions of both Special Term and the Appellate Division made after the new trial clearly reference the effect the suppression had on the previous proceedings. (Appendix B, at 4a; C, at 8-9a). The effect of the suppression is apparent beyond peradventure. It constituted a fraud and deceit on the New York courts and infected the proceedings with error that still has not been purged.[3]

IV.

It is petitioner's contention that the action of respondent and her attorney in suppressing the crucial

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[3] It is interesting to note also in this regard that respondent's counsel urged the courts to believe, during the course of the several proceedings, that the defendant, Mrs. Reoux, was incompetent on September 19, 1953, competent on November 9, 1953, incompetent on April 1, 1954, and competent during the period from August of 1954 to and including October of 1955 (the time of the first trial). It is not surprising that the alleged periods of incompetency coincide with actions taken by Mrs. Reoux favorable to petitioner, and those alleged periods of competency represent occurrences detrimental to petitioner's cause.

evidence deprvied him of a fair trial. It is true that their actions, standing alone, perhaps do not rise to constitutional dimension. The missing element to give petitioner's cause such dimension and to raise his claim to the dignity of a denial of due process of law guaranteed to him by the Federal Constitution was supplied by the Court of Appeals of the State of New York by its reinstating the first decision, infected as it was with fraud and deceit. That decision was procured by an officer of the courts of the State of New York, who was joined in his fradulent and deceitful conduct by both Mrs. Reoux and her heirs, who are the real respondent parties in interest before this Court. Just as a defendant is denied due process of law guaranteed to him by the Fourteenth Amendment to the United States Constitution where the state court judge is prejudiced against him, *Tumey* v. *Ohio,* 273 U.S. 510; just as a defendant is denied due process of law where state officials permit mob rule to take the place of an orderly trial, *Moore* v. *Dempsey,* 261 U.S. 86; and just as a defendant can be deprived of due process of law by the actions of prosecuting officers on behalf of the State, *Mooney* v. *Holohan,* 294 U.S. 103; so to a petitioner is denied his constitutionally guaranteed right to due proces of law where a state court reinstates a decision procured by the fraudulent and deceitful actions of an officer of such state courts.

In finding against petitioner and in reinstating the prior decision, the Court of Appeals placed great emphasis upon the "burden" placed upon petitioner as attorney and son to prove that the gift made by his mother to him was free and voluntary. However, the Court ignored the fact that petitioner was not serving his mother down through the years as an attorney, in

the normal sense of that word. He was serving her as a son, and as a conservator and builder of her estate. Certainly his actions were infected by self-interest, as would have been the actions of any man, attorney or not, under the circumstances. However, this apparent self-interest caused petitioner to be scrupulously fair in his dealings with his mother, and precise in his accountings. (R. 33-34). It did not lead him to any unprofessional conduct, either in her behalf, or against her interest. It is anamolous in the extreme that petitioner, who was deprived of a decision in his favor more than eight years ago by the actions of an attorney, now finds himself deprived again of a decision in his favor by the action of the Court of Appeals in placing upon him a strict and heavy burden of proving that the gift to him was free and voluntary because he himself was an attorney. It is further anamolous that petitioner should be deprived of any share in the estate which he, more than any other person, built and conserved, and that this estate should pass entirely to his sister, her children, and indirectly to her attorney husband, who himself had advised and acted for Mrs. Reoux in legal matters.

This Court has recently stated, in another context, that "court proceedings are held for the solemn purpose of endeavoring to ascertain the truth which is the *sine qua non* of a fair trial". *Estes* v. *Texas,* 381

U.S. 532, 540. The truth of what has occurred in this case is now apparent.

WHEREFORE, the petitioner prays that a Writ of Certiorari be granted.

Respectfully submitted,

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